

**Editor's note: Overruled to the extent inconsistent with Esdras K. Hartley, 57 IBLA 319 (Sept. 1, 1981)**

LEE B. WILLIAMSON

IBLA 80-663

Decided April 30, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 45371 (ND).

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

2. Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject To--Wildlife Refuges and Projects: Generally

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zahl National Wildlife Refuge fall within that prohibition.

APPEARANCES: Lee B. Williamson, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lee B. Williamson has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated April 2, 1980, rejecting oil and gas lease offer M 45371 (ND). The offer covers the

SE 1/4 SE 1/4 sec. 18, T. 159 N., R. 100 W., fifth principal meridian, North Dakota. The decision states that these lands were acquired by the U.S. Fish and Wildlife Service (FWS)) under authority of the Migratory Bird Act in conjunction with the Lake Zahl National Wildlife Refuge <sup>1/</sup> and FWS has determined that oil and gas leasing is not in the best interest of the resource and is not compatible with refuge management.

In his statement of reasons, appellant urges that the BLM plat for T. 159 N., R. 100 W., fifth principal meridian, indicates that the tract was not acquired by FWS.

[1] Under provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased by the Secretary." 30 U.S.C. § 226(a) (1976). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); E. L. Lockhart, 121 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id.

[2] The pertinent regulation, 43 CFR 3101.3-3 states in relevant part:

(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes, or by the terms of the withdrawal order, may be subject to mineral leasing.

(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall

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<sup>1/</sup> The Lake Zahl National Wildlife Refuge was established by Exec. Order No. 8158 (June 12, 1939).

be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under section 17 of the Act. Carol Lee Hatch, 45 IBLA 4 (1980); T. R. Young, Jr., 20 IBLA 333 (1975); Richard K. Todd, 68 I.D. 291, 296 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

While the minerals within the subject lands were never out of United States ownership, the record in this case contains a copy of the warranty deed dated August 28, 1959, by which the United States acquired certain lands in North Dakota including the lands at issue. The deed states that these lands were "acquired for administration by the Secretary of the Interior through the United States Fish and Wildlife Service" and that "the paramount purpose of the Government in acquiring this area is to create a sanctuary for, and the protection of wildlife in the area." The deed further provided that the reservation retained by the grantors was subject to regulations issued by the Secretary of the Interior for the use, protection, and administration of inviolate bird sanctuaries pursuant to section 6 of the Migratory Bird Conservation Act, as amended, 16 U.S.C. § 715e (1976).

Although the lands at issue are not included within the boundaries of the Lake Zahl National Wildlife Refuge, the lands were acquired by FWS for wildlife conservation purposes. Accordingly, we find that the lands fall within the prohibition of 43 CFR 3101.3-3 and that BLM properly rejected appellant's oil and gas lease offer. See Oil Resources Inc., 14 IBLA 333 (1974). Appellant's assertion that the plat does not indicate that the lands were acquired by FWS is incorrect as the lands in the deed of acquisition as well as others in the township are set off on the plat by shading and labeled "FWS."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Douglas E. Henriques  
Administrative Judge

